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November 1, 1995

VIA HAND DELIVERY

William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

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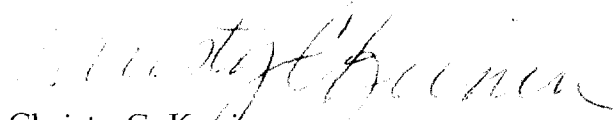
Re: CC Docket No. 95-155

Dear Mr. Caton:

On behalf of NEXTLINK, Inc., enclosed please find an original plus four (4) copies of Comments for filing in the captioned docket. Please stamp the enclosed "receipt" copy for the messenger to return to our office.

Thank you for your attention with this matter.

Sincerely,



Christy C. Kunin  
Attorney for NEXTLINK, Inc.

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Enclosures

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the matter of )

Toll Free Service Access Codes )

) CC Docket No. 95-155  
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**COMMENTS OF NEXTLINK, INC.**

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NEXTLINK, Inc. (NEXTLINK), by its attorneys, submits these Comments in response to the Commission's Notice of Proposed Rulemaking on management and conservation of toll free Service Access Codes (SACs).<sup>1</sup> NEXTLINK is a broadly diversified provider of competitive access, local exchange and other telecommunications services, including innovative, personal communications services delivered via 800 numbers.

NEXTLINK commends the Commission on its timely inquiry into the most fair, efficient and effective means of managing the valuable toll free numbering resource. The Commission must ensure that the rules for administration of toll free numbers prevent premature depletion, warehousing, and hoarding of numbers, while at the same time avoiding the imposition of onerous restrictions and burdens on toll free service providers and small Responsible Organizations (RespOrgs). Competitive parity in the expanding toll free market necessitates that conservation protections be designed and administered in a competitively-neutral and size-indifferent manner. Striking this balance requires sensitivity to the practical constraints and market realities faced by smaller toll free providers and RespOrgs.

<sup>1</sup> Toll Free Service Access Codes, FCC 95-419, CC Docket No. 95-155, Notice of Proposed Rulemaking (adopted Oct. 4, 1995) [hereinafter "Notice" or "NPRM"].

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## I. EFFICIENT USE OF TOLL FREE NUMBERS

NEXTLINK wholeheartedly agrees with the Commission that the fundamental policy basis for ensuring efficient and fair allocation and use of toll free numbers is that carriers should be required to have actual customers for toll free numbers that are “assigned” in the SMS database. NPRM at ¶ 13. Yet in its effort to ensure that there are actual customer requests behind the assignment of valuable toll free numbers, the Commission must avoid requirements that will differentially impact small service providers and RespOrgs, which lack the vast resources of larger carriers, in order to avoid interfering in the competitive development of the rapidly expanding toll free service market.

*Retention of Affirmative Requests for Toll Free Numbers.* The NPRM asks for comment on whether the Commission should require RespOrgs to retain an affirmative, written request for toll free service for two years. NPRM at ¶ 13. Such a requirement would impose unnecessary and competitively harmful costs on smaller providers. In general, the documentation and paper processing costs of a request-confirmation requirement would far outweigh the benefits of such documentation to the Commission. If the Commission has reason to question the number reservation practices of a particular carrier, then such records may be useful to resolve any questions. But mandating written request documentation for *all* carriers needlessly increases overhead expenses, to which smaller carriers are especially sensitive. Consequently, the Commission should not mandate that all RespOrgs, especially small toll free service providers, obtain and retain written documentation of customer number requests. A procedure for review and audit of carrier number reservation and assignment practices—where number-acquisitions are sufficiently excessive to create a question of potential warehousing—should be considered as an alternative that would avoid inordinate administrative expenses (which likely would be passed on to end users).

*Escrow or Deposit Requirement.* NEXTLINK cautions the Commission against adopting escrow or deposit requirements for every toll free service provider or RespOrg. NPRM at ¶ 14. Uniform application of a per number deposit requirement would constitute a substantial—and absolute—monetary entry barrier for small carriers in the toll free services market. Furthermore, the number requirements for new entrants are unlikely to be large enough to create the conservation concerns justifying an escrow concept in the first instance. Therefore, NEXTLINK suggests that if the Commission imposes an escrow or deposit requirement, it should only apply to carriers that reach a threshold level of number reservations, such as the 1% figure suggested in the NPRM. NPRM at ¶ 15. Of course, such a requirement could (and should) also be imposed on carriers actually found to be warehousing or stockpiling numbers in contravention of the Commission's rules for assignment of toll free numbers.

*Lag Times.* The Commission tentatively concludes that reducing the lag times between when a toll free number is reserved and when it actually becomes a working number is in the public interest. NPRM at ¶ 18. NEXTLINK agrees. Limiting the time carriers can “hold” numbers, prior to placing them in service, is consistent with the policy requiring that numbers be obtained by carriers only when there is a billable customer associated with each number. Lag times have no differential impact on smaller carriers and RespOrgs, and therefore are a competitively neutral means of implementing number conservation policies.

*Use of Personal Identification Numbers (PINs).* NEXTLINK commends the Commission on its tentative conclusion that Personal Identification Numbers (PINs) should not be *mandatory* for toll free uses. NPRM at ¶ 21. The use of PINs, by their very nature, decreases the value of some toll free numbers relative to others because PIN number customers are required to dial additional digits to use the toll free service in question. Additionally, the Commission should not place itself in the position of making a subjective value judgment about the appropriate use of toll free numbers.

“Low use” personal numbers have every bit as much value, to society and end users, as high-volume commercial toll free numbers. For instance, the ability to have a college student, or child care provider, reach a parent at all times is of incalculable value to some consumers.

Instead of determining which sorts of toll free uses should qualify for PIN incentives, NEXTLINK believes that the Commission should encourage voluntary use of PINs through competitively neutral incentives, such as the ability of carriers to obtain additional numbers. *See* NPRM at ¶ 21. It is particularly important to avoid use of financial incentives, however, because any monetary concession would not be competitive neutral. Financial incentives in the form of a reduction in any applicable number reservation charges (*e.g.*, the current 70 cents/number charge) should be specifically avoided because they would have a differential impact on a significant component of carriers’ cost of doing business. Moreover, such an incentive is unnecessary because use of PINs *already* provides carriers with a financial break: they pay only a single toll free number reservation charge, and in turn provide service to multiple customers.

## **II. MECHANICS OF OPENING NEW CODES**

NEXTLINK supports the use of the “first come, first served” concept as the basis for assignment of toll free numbers. NPRM at ¶ 23. At the same time, however, it is clear that the Commission must adopt measures that will prevent the usurpation of new toll free SACs by large, automated RespOrgs. These procedures must not only curb the warehousing and hoarding of numbers by large RespOrgs, but must also ensure that carriers who have customers are able to obtain numbers in newly opened toll free codes in a timely and efficient fashion. Procedures drafted with these goals in mind will best safeguard the public interest in valuable toll free numbering resources.

### III. WAREHOUSING

The Commission tentatively concludes that, in order to prevent warehousing, the public interest would be served by reducing the cap on number reservations from 15% of a RespOrg's working numbers to 3% of its working numbers. NPRM at ¶ 33.

NEXTLINK supports the Commission's objective of limiting the quantity of numbers any RespOrg can reserve in a single week, but strongly objects to the use of a percentage cap. Instead, the Commission should adopt an absolute number limit—uniformly applied—that would not unfairly disadvantage new, small, or growing RespOrgs.

Percentage limitations pose an inherent disadvantage to small providers because, by virtue of market share, their volumes are considerably lower than large RespOrgs. For example, a small toll free carrier might, as the result of a successful marketing campaign, require a sudden surge in its number requirements. While this increase could represent a huge percentage increase in numbers reservations, the actual volume of number reservations, in absolute terms, would often be quite small when compared to the reservation requests of a much larger RespOrg. Thus, a percentage cap would constitute an unfair and disproportionate burden on a small or growing RespOrg compared to a larger, established one, artificially constraining the growth and competitive development of new entrants in the toll free services market.

NEXTLINK believes a more appropriate approach, one that would hinder neither large nor small RespOrgs, would be to set an absolute cap on the number of reservations a RespOrg could make in a given week. This cap would need to be relatively high, in order to ensure that large RespOrgs have sufficient numbers to meet their actual customer requirements. As noted below, however, such limitations could be reduced when an exhaust "trigger" indicated a need to reduce number acquisition and delay SAC code exhaustion.

While NEXTLINK agrees that there is some value in user/customer certification as proposed by the Commission, we disagree with the affirmative certification

requirements outlined in the Notice. NPRM at ¶ 34. Once again, the imposition of new administrative record creation and retention requirements increases carrier overhead without materially aiding number conservation. As an alternative, NEXTLINK suggests a more direct and efficient method. The Commission could revise its rules—which are binding on all RespOrgs—to specifically state that the act of a RespOrg accessing the SMS database to withdraw a toll free number would constitute certification. Thus, each number reservation would be the RespOrg’s legally binding representation that there is an identified customer who has agreed to be billed for service associated with each toll free number requested from the database, and there is an identified, billed customer before switching a number from “reserved” or “assigned” to “working” status. By making number withdrawal and certification coextensive, the Commission can achieve its objective without imposing unnecessary and costly bureaucratic requirements on RespOrgs.

#### **IV. THE CIRCUIT BREAKER MODEL**

The NPRM asks for comment on proposals for development of a “circuit breaker” model for toll free number conservation. NEXTLINK fully supports the development of circuit breaker conservation measures. Recent experience with the sudden acceleration of 800 number exhaustion demonstrates that an equitable and predictable mechanism is necessary to prevent abusive reservation practices that lead to premature depletion of numbers. As discussed above, however, NEXTLINK believes that percentage-based caps inappropriately penalizes small RespOrgs.

Smaller RespOrgs will have much more uneven and unpredictable reservation patterns. For this reason, the day-to-day circuit breaker proposal that looks at the past five days’ activity would place a particularly onerous burden on small RespOrgs. NPRM at ¶ 55. NEXTLINK suggests alternatively that the Commission adopt an absolute numerical cap that would apply uniformly to all RespOrgs. Once the


appropriate exhaust date "trigger" has been reached for a toll free code, and preparations have begun for release of a new code, the cap could be lowered, and applied equally to all RespOrgs, in order to slow consumption and prevent premature exhaust of toll free numbers.

### CONCLUSION

NEXTLINK commends the Commission's efforts to refine the toll free number reservation and assignment process in order to ensure fairness and efficiency in the use of these valuable numbering resources. SAC administration and management measures must balance the objectives of preventing abuse, ensuring equitable reservation policies, and promoting competitively neutral number administration in the rapidly growing toll free services market. The Commission should take particular care to avoid establishing criteria, such as percentage number reservation limitations, that would artificially constrain the expansion of new, small or growing RespOrgs.

Respectfully submitted

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Dated: November 1, 1995